

Municipal Clerk
Atlanta, Georgia

04- 0 -0361
U-03-03

AN ORDINANCE
BY: ZONING COMMITTEE

AN ORDINANCE TO GRANT A SPECIAL USE PERMIT FOR A PERSONAL CARE GROUP HOME IN THE R-4 (SINGLE-FAMILY RESIDENTIAL DISTRICT, FOR PROPERTY LOCATED AT **169 FAIRBURN ROAD, S.W.**, IN ACCORDANCE WITH AN ORDER OF THE SUPERIOR COURT OF FULTON COUNTY, ENTERED ON SEPTEMBER 30, 2003 IN THE CASE OF JOHN M. HAMMONTREE VS. CITY OF ATLANTA.

NPU-H

COUNCIL DISTRICT 10

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS:

SECTION 1. Under the provisions of Section 16-05.005(1)(c) of the Zoning Ordinance of the City of Atlanta, a Special Use Permit for a Personal Care Group Home is hereby approved, in accordance with an order of The Superior Court of Fulton County, entered on September 30, 2003 in the case of John M. Hammontree vs. City of Atlanta. Said use is granted to John M. Hammontree and is to be located at **169 Fairburn Road, S.W.**, to wit:

ALL THAT TRACT or parcel of land lying and being in Land Lot 13 of the 14FF District, Fulton County, Georgia, being more particularly shown on the attached map.

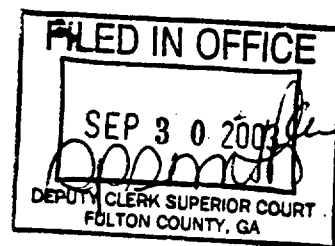
SECTION 2. That this amendment is approved under the provisions of Section 16-25.003 of the Zoning Ordinance of the City of Atlanta entitled, "Special Use Permit, Procedural Requirements", and the Director of the Bureau of Buildings shall issue a building permit for the development of the above-described property only in compliance with the applicable provisions of said part. Any conditions approved herein (including any conditional site plan) do not authorize the violation of any zoning district regulations. District regulation variances can be approved only by application to the Board of Zoning Adjustment.

SECTION 3. That all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.



ORIGINAL

THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA



JOHN M. HAMMONTREE
Plaintiff,

v.

Civil Action No. 2003CV73598

CITY OF ATLANTA, GEORGIA, the
CITY OF ATLANTA CITY COUNCIL,
and NORMAN KOPLON, in his Official
Capacity as Director of the Bureau of
Buildings,
Defendants.

FINAL ORDER

This case being called for a non-jury calendar before this Court on September 29, 2003, and the Court having heard counsel for each party and reviewed the Record of the proceedings on Special Use Permit Application No. U-03-03 before the City Council of the City of Atlanta, Georgia;

IT IS HEREBY FOUND ORDERED AND ADJUDGED that Plaintiff's Appeal from the City Council, Mandamus and Other Equitable Relief is GRANTED in part and the City is ordered to issue the Special Use Permit, Application U-03-03, for property located at 169 Fairburn Road, SW, Atlanta, Fulton County, Georgia for Plaintiff to operate a personal group care facility for 13 residents. This Court's ruling in favor of Plaintiff's appeal renders moot the rest of Plaintiff claim.

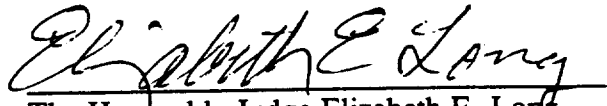
This Court, having reviewed the Record of evidence presented as part of the Special Use Permit Application No. U-03-03, finds that no record evidence was adduced which

supported the denial of the application and that the denial of the application therefore was a gross abuse of discretion. Defendant's own Staff expressly found that the application complied with the objective criteria set forth in the Ordinance and these findings of fact were unanimously adopted by the Zoning Review Board and stand unchallenged. A city council reviewing a special use permit acts in a quasi-judicial, not a legislative capacity. Dougherty County v. Webb, 256 Ga. 474, n. 3, 350 S.E.2d 457 (1986); and Fulton County v. Bartenfeld, 257 Ga. 766, 363 S.E.2d 555 (1988). This Court further finds that record evidence did not support the imposition of a two-year limit on the SUP and therefore orders that the permit be issued according to Staff's findings that "perpetual" is appropriate.



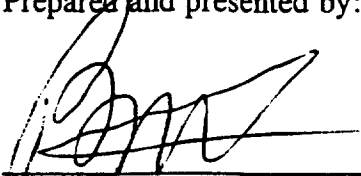
THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED THAT the Council's denial of Plaintiff's application a gross abuse of discretion and that the permit should be and hereby is granted. Defendants are ordered to issue the Special Use Permit, Application No. U-03-03, according to the Staff's recommendations as set forth in the Record without any limit as to the duration.

IT IS SO ORDERED this 30th day of September, 2003.


The Honorable Judge Elizabeth E. Long
Superior Court of Fulton County



Prepared and presented by:



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Georgia Bar No. 205760

Phears & Moldovan

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770-446-2116



GEORGIA, FULTON COUNTY

I, DO CERTIFY THAT THE WITHIN AND FOREGOING IS A TRUE
COMPLETE AND CORRECT COPY OF THE ORIGINAL IN SAID
CASE, AS APPEARED BY THE ORIGINAL ON FILE IN THE OFFICE
OF THE CLERK OF THE SUPERIOR COURT, CONSISTING
OF 03 PAGES.

WITNESS MY HAND AND THE SEAL OF SAID COURT THIS THE
24 DAY OF February 20 09

William Almond
DEPUTY CLERK, FULTON SUPERIOR COURT

JUANITA HICKS
CLERK OF THE SUPERIOR COURT
OF FULTON COUNTY, GEORGIA